MINUTES
of the
FIFTH MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

November 6-7, 2014
State Capitol, Room 307
Santa Fe

The fifth meeting of the Transportation Infrastructure Revenue Subcommittee for the 2014 interim was called to order by Representative Roberto "Bobby" J. Gonzales, chair, on Thursday, November 6, 2014, at 9:32 a.m. at the State Capitol in Santa Fe.

Present	**Absent**
Rep. Roberto "Bobby" J. Gonzales, Chair	Sen. Timothy M. Keller
Sen. John Arthur Smith, Vice Chair	
Rep. Ernest H. Chavez	
Sen. Lee S. Cotter	
Sen. Ron Griggs (11/7)	
Rep. Larry A. Larrañaga	
Rep. Patricia A. Lundstrom	
Rep. Jane E. Powdrell-Culbert	
Sen. Clemente Sanchez	

Advisory Members

Rep. Cathrynn N. Brown	Sen. William H. Payne
Sen. Jacob R. Candelaria (11/7)	Sen. William E. Sharer
Sen. Carlos R. Cisneros (11/7)	
Rep. Sharon Clahchischilliage	
Rep. Nathan "Nate" Cote	
Rep. Anna M. Crook	
Rep. Edward C. Sandoval	

Guest Legislators
Rep. Alonzo Baldonado
Rep. Kelly K. Fajardo
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Sen. Howie C. Morales
Sen. Michael S. Sanchez

(Attendance dates are noted for members not present for the entire meeting.)

Staff
Mark Edwards, Legislative Council Service (LCS)
Peter Kovnat, LCS
Carolyn Ice, LCS

Minutes Approval

Because the subcommittee will not meet again this year, the minutes for the meeting have not been officially approved by the subcommittee.

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and posted on the legislature's web site.

Thursday, November 6

The meeting began with a motion to adopt the minutes from the August and October meetings.

Southwest Chief Rail Service: An Examination of State Authorities and Limitations Pursuant to the Constitution of New Mexico

Burlington Northern Santa Fe Railway (BNSF) owns and maintains a railroad track that runs from Hutchinson, Kansas, to Albuquerque, New Mexico. This BNSF railroad track is a major segment of the track used by the Southwest Chief, an Amtrak passenger train that provides daily service between Chicago, Illinois, and Los Angeles, California. Amtrak uses the BNSF track pursuant to a contract that expires at the end of 2015. At the November 12, 2013 meeting of the Transportation Infrastructure Revenue Subcommittee, Amtrak stated that BNSF had decided that maintaining the track to passenger train standards was too costly, and, therefore, did not intend to continue maintenance of this track segment beyond the lower freight standard after 2015. To continue Southwest Chief rail service, Amtrak proposed that New Mexico join in a five-way partnership with Amtrak, BNSF and the states of Colorado and Kansas to divide the costs of rebuilding and maintaining the track. At that meeting, several members of the subcommittee raised questions about whether the Anti-Donation Clause, Article 9, Section 14 of the Constitution of New Mexico, would be an obstacle to New Mexico participating in such a partnership.

Arthur Waskey, contract staff attorney, LCS, addressed the Anti-Donation Clause issue. Mr. Waskey's full analysis is provided in an information memorandum included in the subcommittee handout materials.

Mr. Waskey began by providing some background information on Amtrak and the rail service. Passenger rail service on the Southwest Chief route was provided by a private company from 1936 to 1971. In 1971, Amtrak, a federal corporation, took over the operation of this service pursuant to the Rail Passenger Service Act of 1970. Stipulating that his testimony was based on his own interpretations of the clause and that his conclusions were only a prediction of how the court may rule, Mr. Waskey indicated that there are two separate questions that must be asked to determine if the Anti-Donation Clause would apply to Amtrak's proposed cost-sharing agreement:

1) whether New Mexico's obligation under the agreement would be considered a donation; and

2) whether Amtrak is defined as a private enterprise or a government entity.

With regard to the first question, Mr. Waskey noted that the Southwest Chief route is anticipated to disappear without some sort of cost-sharing arrangement for refurbishment and maintenance of the track. Therefore, New Mexico's participation in the agreement could be better defined as a contract for service rather than a donation. He noted that the authorizing statutes for the New Mexico Department of Transportation (DOT) state that construction and maintenance of transportation projects are an essential governmental function. With that in mind, he stated an opinion that a cost-sharing instrument obligating Amtrak to continue Southwest Chief service for a specified time period would render this first element of the Anti-Donation Clause inapplicable.

With regard to the second question, Mr. Waskey stated that Amtrak is analogous to the New Mexico Finance Authority or New Mexico State Fair as a government instrumentality rather than a private enterprise. He noted that Amtrak had been created by Congress and receives yearly federal appropriations to subsidize its budget. Further, Mr. Waskey cited a 2004 United States Supreme Court opinion, *Hebron v. National Railroad Passenger Corporation*, wherein the court determined that Amtrak is "an agency or instrumentality of the United States" in situations where individual rights are protected from government action. Based on these facts, Mr. Waskey stated his opinion that the second, private enterprise element of the Anti-Donation Clause would not apply to New Mexico's participation in the Amtrak cost-sharing proposal.

In an ensuing general discussion, subcommittee members raised concerns about whether the Southwest Chief rail service is an essential government function, whether the state would be subsidizing a federal service and whether the service is required to continue the property taxes that BNSF currently pays into county budgets for its rail line properties.

A subcommittee member raised a question about the practicality of Amtrak rerouting the Southwest Chief train through Clovis, New Mexico, and bypassing the communities on its current route. Ray Lang, director of government relations, Amtrak, responded that it was not practical. He noted that the rail line through Clovis, known as the TransCon, is congested with freight trains that move 20 or more miles per hour slower than passenger trains. He then stated that the cost of track sidings and additional signals that would need to be installed to accommodate the Southwest Chief on the TransCon would be more costly than rehabilitating and maintaining the track on the current route.

Southwest Chief Rail Service: Engineering Cost Estimate Review and Economic Impact Analysis

Frank Sharpless, transit and rail director, DOT, began with a brief background on Amtrak and the Southwest Chief. Congress created Amtrak in 1970 as a corporation to take over and independently operate the nation's intercity rail passenger services. In fiscal year (FY) 2014, Amtrak generated $2.2 billion in ticket revenues. Amtrak's total FY 2015 budget request to Congress is $1.62 billion in operating and capital funds. Total funding requested for long-distance routes is $913 million. The Southwest Chief is one of 15 long-distance routes operated by Amtrak. However, the track is owned by the BNSF freight rail carrier. Due to declining freight traffic, BNSF no longer uses major segments of the Southwest Chief route through northeast New Mexico, Colorado and Kansas on a regular basis, and plans to reduce it maintenance operations accordingly. Therefore, to maintain the Southwest Chief service, Amtrak must absorb the costs of maintaining the line to the class 4, passenger rail service standard of 79 miles per hour. However, Amtrak's foreseeable funding is insufficient to absorb these costs.

Mr. Sharpless told members of the subcommittee that Amtrak met separately with Colorado, Kansas and New Mexico in 2011 and proposed a cost-sharing proposal for capital costs and operation of the BNSF rail line. BNSF requested that Amtrak and the three states each provide $4 million every year for 10 years starting in 2016. He noted that the request did not include any maintenance costs or estimates after 10 years. In 2012, the three states sent a joint letter to Amtrak stating that they support the Southwest Chief and would be seeking congressional delegation support, but could not commit to funding the Southwest Chief due to budget restraints.

Mr. Sharpless then turned the subcommittee's attention to reports from a maintenance costs analysis of the Southwest Chief rail track by Wilson and Company and an economic impact analysis of the Southwest Chief passenger service by Cambridge Systematics. The cost study was conducted using data provided by BNSF and other available data sets, but no physical inspections. Within the parameters of the cost study, "maintenance costs" include anticipated reconstruction of track segments. The cost study estimates that yearly maintenance for the whole line would be $28,668,000 per year from 2016 through 2025, and New Mexico's portion of those costs would be $9,373,000. The study predicts that ridership of the Southwest Chief will increase at a uniform 2% annual rate on its current route. However, the study estimates that 40% to 50% of the passengers destined for Lamy, Las Vegas or Raton would not make the trip if the route is changed and would have to find alternative modes of travel. The economic impact study also examined the potential gains in other towns if the Southwest Chief is moved to the TransCon route through Clovis. In aggregate, the study estimates that New Mexico would lose $13.3 million in gross regional product and $2.4 million in local, state and property taxes annually if the train service is completely lost. Conversely, the estimated annual losses would be reduced to $3.3 million in gross regional product and $1.4 million in local, state and property taxes if the Southwest Chief is rerouted onto the TransCon.

Mr. Sharpless and Loren Hatch, general counsel, DOT, highlighted two other factors to consider in determining the benefits and costs of entering into a cost-sharing agreement for the Southwest Chief at this time. Mr. Sharpless noted that while the maintenance cost study was being done, Garden City, Kansas, received a federal Transportation Investment Generating Economic Recovery (TIGER) grant for rehabilitation work on various track segments in Kansas and Colorado. This is a matching grant with $12.5 million in federal funds being matched by $9.3 million in contributions from local governments in Kansas and Colorado, the State of Kansas, Amtrak and BNSF. The funding will be used to restore 54.9 miles of track to the class 4 passenger train standard. As a result, BNSF has pledged to maintain this track for 20 years. He indicated that while this was very good news for retaining the Southwest Chief, it raised a question regarding the accuracy of the figures in the Amtrak proposal.

Mr. Hatch drew the subcommittee's attention to a difference between short-distance in-state trains and long-distance multi-state trains. He noted that while states have had a history of supplementing the costs for short-distance trains, long-distance trains have traditionally been thought of as a federal responsibility. He suggested that not only would state and local government cost-sharing for the Southwest Chief create a new precedent, but that it might likely result in a permanent shifting of responsibility for costs away from the federal government.

A subcommittee member then asked what the prospects were for adding freight service to the Southwest Chief route to distribute the cost burdens. Mr. Lang answered that he did not have immediate information and that the national boom in oil production is rapidly changing freight patterns. He indicated that there is potential for opportunities for increased freight traffic on the route.

The subcommittee then entered into a general discussion in which the following concerns were raised: a need to have a definitive figure for the cost of ensuring a 20-year service agreement; a need for a strong estimate of the ongoing maintenance costs extending beyond the 10- and 20-year time frames; and whether switching the Southwest Chief route to the TransCon would disrupt the growth of freight service on that line.

Update of Transportation System Needs

Ernest Archuleta, operation divisions director, DOT, and Elias Archuleta, chief engineer, DOT, presented an update on the state of the DOT system. Currently, the DOT is facing several challenges. Departmental resources have not kept pace with demand. Current staffing levels are equivalent to 1999 levels although lane miles have increased by 2,737 miles since 1999. Also, two sectors of economic growth, the port of entry and Union Pacific intermodal facility at Santa Teresa, and the oil industry have greatly increased heavy truck shipments in their areas. This has increased the demand for paved roads and extended lanes able to sustain heavy loads and reduce traffic congestion. An ongoing concern is that 55% of the DOT's project construction budget must be dedicated to servicing long-term debt obligations.

Elias Archuleta noted that the DOT rates road conditions as "good", "fair" and "poor". He stated that the cost difference for maintaining or improving a road in good or fair condition is marginal compared to the costs of rehabilitating a road in poor condition. Therefore, he remarked that his primary management rule for maintaining the state's road system is to maximize the percentage of lane miles rated fair. An automated, statewide, full-coverage survey was conducted in 2013, and about 80% of the roads were rated fair. He stated that approximately $115.8 million is needed to cover the gap between what is needed to maintain the road system and what is available in the state's budget. The funding gap between construction demand and the budget is approximately $458.6 million.

The subcommittee then entered into a general discussion in which the following issues were raised: a concern about the DOT having the funding needed to buy down the interest rates on outstanding general obligation bonds; a concern that DOT funding is only meeting about 50% of the need; and a concern that local and county road programs are facing similar funding gaps.

Los Lunas I-25 Interchange Proposal

Charles Griego, mayor, Village of Los Lunas, and Alicia Aguilar, commissioner, Valencia County, testified on the traffic congestion in Los Lunas and its impact on daily life for members of the community. Mayor Griego stated that Los Lunas has been the fastest-growing city in New Mexico since 1960, yet New Mexico Highway 6 (NM 6) remains the only exit on Interstate 25 (I-25) for Los Lunas. The presenters emphasized that there is a great need for a new interchange on the interstate and for an east-west corridor to improve traffic flow in the city. They stated that the current traffic congestion on NM 6, which becomes Los Lunas's Main Street, results in traffic snarls that block emergency response providers, greatly stretch commuting time and adversely affect area businesses and schools.

Kevin Eades, P.E., Molzen Corbin, told the subcommittee that recent studies conducted by Los Lunas show that a new interchange on I-25 south of NM 6, with a road extending across the Rio Grande to NM 47, would decrease eastbound traffic by approximately 43%. He said the funding needed for the complete project is $75 million. Los Lunas's engineering plan contemplates that the project will be constructed in two phases, with the first phase including an I-25 exit that extends to NM 314 west of the river at a cost of $30 million. Phase two would extend the traffic corridor from NM 314 across the river to NM 47 at a cost of $45 million.

Commissioner Aguilar noted that, although local businesses were initially reluctant to support an interchange, general public acceptance of the project is high, and businesses now agree that congestion is more detrimental than beneficial.

A legislator noted that Los Lunas's Main Street has several historic properties, such as the Luna Mansion, that prohibit widening the road, which exacerbates the current traffic congestion and heightens the need for an alternative route. Conversely, while acknowledging the need for a traffic relief route, a legislator noted that during negotiations on an earlier traffic relief plan several years ago, the Pueblo of Isleta was promised an I-25 interchange on the east side of the river and that building one on the west side might be considered a broken promise.

Finally, a legislator asked whether the $75 million for the complete project would include a bridge across the Rio Grande. Mr. Eades acknowledged that this was uncertain. He stated that the $75 million project estimate was considered accurate based on a 30% design.

Critical Transportation Needs and Issues in Eddy County

Ray Romero, public works director, Eddy County, began the presentation by expressing his concerns about increased traffic and its implications on public safety in Eddy County. He noted that Eddy County is directly responsible for 1,232 miles of roads, and that of these miles, 797 miles are paved and 435 miles are unpaved. However, Eddy County's budget has the financial capabilities to improve only 25 to 30 miles a year. Susan Crockett, commissioner, Eddy County, explained that Eddy County had been keeping up with its road needs but that two major challenges have impacted its ability to keep up. The first challenge has been the oil industry boom. Not only has the boom created a big jump in traffic volume, much of that new traffic comes from heavy shipment trucks. The resulting wear and tear has caused a significant decrease in the engineering life of the county's roads. The second challenge was the severe flooding events in 2013 and in 2014.

The presenters included several pictures in their handout that show large road segments and drainage culverts that have been completely washed out by the flooding. Kenney Rayroux, assistant county manager, Eddy County, noted that the most recent flood event stranded several oil rigs and their crews. This created tens of thousands of dollars in lost production per rig, and retrieving the oil crews represented a public health challenge. He credited various oil companies for volunteering equipment, materials and employees to make the most critical roads passable.

Mr. Romero then stated that Eddy County is requesting road funding assistance to meet both the increased traffic demand and for reconstruction of several roads damaged by the flooding. In particular, he cited a need for a loop road around Carlsbad. The first phase of this project is estimated to cost $54 million. With regard to flood damage, the Federal Emergency Management Agency (FEMA) has estimated that it will take $13 million to $15 million to restore the roads to their pre-flood condition, and an additional $20 million to upgrade the road system's low-water crossings.

Eddy County has already submitted a request for a loan from the DOT and has applied for a federal TIGER grant. Eddy County is also in the process of integrating the master transportation plans from the state and the City of Carlsbad into a county-wide plan. Specialists have been contacted to assist in the maintenance of roads to avoid future instances of similar problems faced by the county today.

The subcommittee then entered into a discussion wherein the following concerns were raised: Eddy County is now first in the state in traffic fatalities per 1,000 people; the pre-oil boom roads do not have adequate shoulders for safety; and a large percentage of the state's budget comes from the oil-producing counties, and production is dependent on adequate roads.

Recess

There being no further business before the subcommittee, the meeting recessed at 3:59 p.m.

Friday, November 7

Representative Gonzales reconvened the meeting at 9:14 a.m.

Review of Proposed Legislation

The first of four bills considered by the subcommittee for endorsement, 202.197825.2, would extend the overweight zone for vehicles at ports of entry from Mexico from six to 12 miles. Upon a proper motion and second, and without opposition, the subcommittee voted to endorse the bill, which Senator Mary Kay Papen will carry.

The second of four bills considered by the subcommittee for endorsement, 202.197966.2, would appropriate $200,000 for a repair or replace engineering design assessment for bridges in McKinley County that are not load rated for emergency vehicles and standard-sized school buses. The bill was drafted as a general fund appropriation. Upon a proper motion and second, the subcommittee voted to endorse the bill with a direction to staff to redraft it as a severance tax bond revenue appropriation bill, which Representative Lundstrom will carry.

The third of four bills considered by the subcommittee for endorsement, 202.197715.2, would give municipalities and counties the ability to impose a tax on special fuel. For the tax to be levied, the local population must vote to do so, and the proceeds could only be used for road, highway and bridge construction and repairs.

Subcommittee members asked questions about how the tax would be collected and how much money would be raised. The requester, Senator Griggs, said that those details would emerge when the law is implemented, but that it is critical to give local governments the ability to raise money for transportation infrastructure. Upon a proper motion and second, and without opposition, the subcommittee voted to endorse the bill, which Senator Griggs will carry.

The fourth of four bills considered by the subcommittee for endorsement, 202.197843.1, would authorize the issuance of $100 million of supplemental severance tax bonds each year for six years. Each year, the funding from this authorization would be to a different DOT engineering district for road projects, until all six districts had received funds. The sequence in which the DOT engineering districts would receive the funds would start with the district with the highest traffic fatality ratio in FY 2015 and proceed in descending order, district to district, for six years. Subcommittee members expressed concerns about the process for choosing projects, questioned whether they would have to be shovel-ready to qualify for funding and asked what other state-funded projects would lose out on funding. One subcommittee member noted that redirecting funds is just a temporary solution and that it would be wiser to use any extra money available to pay off the state's debt. Tom Church, secretary, DOT, said that the department currently pays $162 million a year in debt service.

Upon a proper motion and second, and with opposition from Representative Powdrell-Culbert and Senator Sanchez, the subcommittee voted to endorse the bill, which Senator Griggs will carry.

Adjournment

There being no further business, the meeting adjourned at 1:25 p.m.